

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

ZACKRY DEON SMITH,

Plaintiff,

v.

MICHAEL ELROY, et al.,

Defendants.

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Case No. CIV-24-33-J

ORDER

Plaintiff, appearing pro se, filed a Complaint [Doc. No. 1] but did not pay the filing fee or seek leave to proceed in forma pauperis. The matter was referred to United States Magistrate Judge Amanda Maxfield Green for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C) and she ordered Plaintiff to cure the deficiency. [Doc. No. 4]. Judge Green cautioned Plaintiff that failure to respond could result in dismissal of the action. *See id.* Plaintiff failed to do so, and Judge Green has submitted a Report and Recommendation recommending the action be dismissed without prejudice. [Doc. No. 5]. Plaintiff has not filed an objection within the given time frame and has therefore waived any right to appellate review of the factual and legal issues in the Report and Recommendation. *See Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).¹ Because Plaintiff has failed to comply with the Court's orders, the Court ADOPTS the Report and Recommendation [Doc. No. 5] and DISMISSES Plaintiff's Complaint without prejudice.

¹ It appears that Plaintiff never received the Report and Recommendation because he failed to update his address for the Court's records. [Doc. No. 6]. However, Plaintiff bears the responsibility for updating his contact information, therefore his inability to receive filings does not alter the outcome in this case. *See Theede v. U.S. Dep't of Labor*, 172 F.3d 1262 (10th Cir. 1999). Further, Judge Green's order instructing Plaintiff to either pay the filing fee or seek leave to proceed in forma pauperis was not returned as undeliverable and was presumably received by Plaintiff.

IT IS SO ORDERED this 15th day of March, 2024.



BERNARD M. JONES
UNITED STATES DISTRICT JUDGE